



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

September 15, 2004

Mass Design, Inc.
Attn: Anthony Bourassa
41 Simon Street
Nashua, NH 03060

Re: Administrative Order by Consent Docket No. AO WMD 04-011

Dear Mr. Bourassa:

Enclosed for your records is a copy of the Administrative Order by Consent in the above-captioned matter which was executed by Anthony P. Giunta, P.G., Waste Management Division Director, and accepted by Commissioner Michael P. Nolin on September 13, 2004. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving these matters. If you have any questions, please contact me at (603) 271-6072, or by e-mail at msclafani@des.state.nh.us.

Sincerely,
COPY
Michael Scalfani
Legal Assistant

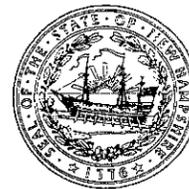
cc: Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator DES Legal Unit
Public Information Officer, DES PIP
Jennifer J. Patterson, NH DOJ
City Clerk, Nashua, NH



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2900 FAX (603) 271-2456



Mass Design, Inc.
41 Simon Street
Nashua, NH 03060

Re: Mass Design, Inc.
22 Tanguay Street
Nashua, NH 03063
EPA ID No. NHD986466290

**ADMINISTRATIVE ORDER
BY CONSENT
No. WMD 04-11**

A. INTRODUCTION

This Administrative Order by Consent is issued by the Department of Environmental Services, Waste Management Division to, and with the consent of, Mass Design, Inc., pursuant to RSA 147-A:14. This Order is effective upon signature of all parties.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 29 Hazen Drive, Concord, NH 03301.
2. Mass Design, Inc. ("Mass Design") is a New Hampshire corporation that registered with the New Hampshire Secretary of State's Office on July 23, 1993. Mass Design has a mailing address of 41 Simon Street, Nashua, NH 03060. At the time of the inspection Mass Design operated a facility located at, 22 Tanguay Avenue, Nashua, NH 03063 but has since relocated the facility to 41 Simon Street, Nashua, NH 03060.

C. STATEMENT OF FACTS AND LAW

1. RSA 147-A authorizes DES to regulate the management, including storage, treatment, containerization, transportation, and disposal of hazardous wastes. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted New Hampshire Administrative Rules Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Mass Design (formerly M-Tek) is a hazardous waste generator that initially notified the United States Environmental Protection Agency ("EPA") of its activities in Nashua, NH, through DES on April 14, 1988. EPA Identification Number NHD986466290 was assigned to Mass Design's site located at 22 Tanguay Avenue, Nashua, NH (the "Facility"). Mass Design filed a notification with DES on April 23, 1998, changing the Facility's name from M-Tek to Mass Design.

3. On April 16, 2003, DES personnel conducted an inspection (the "Inspection") of the Facility. The purpose of the Inspection was to determine Mass Design's compliance status relative to RSA 147-A and the Hazardous Waste Rules.
4. At the time of the Inspection, DES personnel documented the following hazardous waste storage areas, the "Plating Room" and "Shipping Room".
5. During the Inspection, DES personnel observed one (1) 5-gallon container and one (1) cubic yard container of hazardous waste stored in the Plating Room.

The one (1) 5-gallon container in the Plating Room was later determined to be part of the process, thus did not contain a hazardous waste.
6. At the time of the Inspection, no hazardous waste was stored in the Shipping Room hazardous waste storage area.
7. Mass Design operates a wastewater treatment unit ("WWTU") which is a hazardous waste treatment facility within the definition of RSA 147-A:2, IV.
8. RSA 147-A:4, I requires any person who wishes to operate a hazardous waste treatment facility to first obtain a Limited Permit for a WWTU provided the operator meets the conditions specified in Env-Wm 353.04(b) through (o), including the submission of a Limited Permit application form.
9. Mass Design was granted Limited Permit DES-HW-LP-95-002 ("the Limited Permit") on June 19, 1995.
10. Env-Wm 353.04(r)(1) requires facilities to apply for a permit renewal to DES within 90 days prior to the limited permit expiration date.
11. Mass Design's Limited Permit expired on June 19, 2000.
12. At the time of the Inspection, DES had no record of receiving an application for a permit renewal or a limited permit application form from Mass Design for the WWTU.
13. Env-Wm 502.01 requires that all generators of waste determine if their waste is a hazardous waste.
14. At the time of the Inspection, no formal hazardous waste determination had been performed on the waste lamps generated by Mass Design. DES personnel also confirmed that Mass Design has disposed of waste lamps in the on-site dumpster.
15. Env-Wm 507.01(a)(3) requires hazardous waste to be placed in containers or tanks that are closed at all times except to add or remove waste.
16. During the Inspection, DES personnel observed that the one (1) 5-gallon container and the one (1) cubic yard container of hazardous waste were not closed. See the attached Hazardous Waste Container Inventory ("Inventory").

The one (1) 5-gallon container in the Plating Room was later determined to be part of the process, thus did not contain a hazardous waste.

17. Env-Wm 507.03(a)(1)a. requires containers and tanks to be marked with the beginning accumulation date when they are first used to store hazardous waste.

18. During the Inspection, DES personnel observed that the one (1) 5-gallon container and the one (1) cubic yard container of hazardous waste were not marked with the beginning accumulation date. (See the attached Inventory).

The one (1) 5-gallon container in the Plating Room was later determined to be part of the process, thus did not contain a hazardous waste.

19. Env-Wm 507.03(a)(1)b., c., and d. require containers and tanks used for the storage of hazardous waste to be clearly marked with the words "hazardous waste", words that identify the contents of the container, and the EPA or state waste number.

20. During the Inspection, DES personnel observed that the one (1) 5-gallon container and the one (1) cubic yard container of hazardous waste were not marked with the words "hazardous waste", words that identify the contents of the container, and the EPA or state waste number. (See the attached Inventory).

The one (1) 5-gallon container in the Plating Room was later determined to be part of the process, thus did not contain a hazardous waste.

21. Env-Wm 509.02(a)(1), which references 40 CFR Part 265.15, General Inspection Requirements, requires full quantity generators to conduct inspections of the Facility, including the hazardous waste storage area, and to document the inspections.

22. At the time of the Inspection, Mass Design was not conducting and documenting inspections of the hazardous waste storage areas, the Plating Room and the Shipping Room.

23. Env-Wm 509.02(a)(2), which references 40 CFR Part 265.16, Personnel Training, requires full quantity generators to maintain a personnel training program for its employees responsible for handling hazardous waste.

24. At the time of the Inspection, Mass Design was not maintaining a personnel training program for its employees responsible for handling hazardous waste.

25. At the time of the Inspection, Mass Design was not providing hazardous waste training to six (6) employees responsible for handling hazardous waste. The six (6) employees are identified as: Paul Boduch (Primary Emergency Coordinator), Tony Bourassa (Secondary Emergency Coordinator), Shawn Paradise, Mark Connell, Bruce Justason, and Wayne Gitlitz.

Mass Design provided the following information: Tony Bourassa and Mark Connell did not have hazardous waste duties, Shawn Paradise was trained by Paul Trudeau and both no longer work for the company, Wayne Gitlitz was hired November 2002 and took the NH Hazardous Waste

Coordinator training on June 23, 2003, and Bruce Justason did not have hazardous waste duties until he took the NH Hazardous Waste Coordinator Training on June 30, 2004.

26. Env-Wm 509.02(a)(5), which references 40 CFR Part 265, Subpart D, Contingency Plan and Emergency Procedures, requires full quantity generators to maintain a contingency plan at the facility and to submit copies of the contingency plan to all local police departments, fire departments, hospitals and State and local response teams that may be called upon to provide emergency services.

27. At the time of the Inspection, Mass Design had not submitted a contingency plan to all local police departments, fire departments, hospitals and State and local response teams that may be called upon to provide emergency services.

28. Env-Wm 509.02(b) requires full quantity generators to post at the nearest telephone to each hazardous waste storage area, the emergency coordinators' home and office numbers, and the location of fire extinguishers and spill control material.

29. At the time of the Inspection, Mass Design's emergency posting, did not indicate the location of fire extinguishers and spill control material.

30. Env-Wm 510.02(d) requires that the generator retain one (1) copy of the manifest with signatures, and forward one (1) copy to the destination state and one (1) copy to DES within five (5) days of shipment.

31. At the time of the Inspection, Mass Design had not forwarded to DES, copies of the following eight (8) manifests: PAG326002, PAG326006, PAG326003, PAG326001, PAG326004, PAG326005, PAG468521, and PAG470180.

32. Env-Wm 512.01(a)(1) requires generators to keep all manifests copies, including the original generator copy and the copy certified by the designated destination facility for 3 years from the date of signature by the generator.

33. At the time of the Inspection, Mass Design did not have manifest copies certified by the designated destination facility for the following ten (10) manifests: PAG468521, PAG326004, PAG326001, PAG326003, PAG326006, PAG326002, PAG0324656, PAG0324660, PAG0324645, and PAG0324634.

Mass Design provided to DES copies of the ten (10) manifests certified by the designated destination facility in their submittal date April 21, 2003, that they did have on file at their Facility, but which could not be found at the time of the inspection.

D. DETERMINATION OF VIOLATIONS

1. Mass Design has violated Env-Wm 353.04(r)(1) by failing to submit a request for the renewal of Limited Permit DES-HW-LP-95-002 within 90 days prior to the limited permit expiration date.
2. Mass Design has violated Env-Wm 502.01 by failing to adequately determine if its waste is a hazardous waste.
3. Mass Design has violated Env-Wm 507.01(a)(3) by failing to close containers used to store hazardous waste.
4. Mass Design has violated Env-Wm 507.03(a)(1)a. by failing to mark each container storing hazardous waste with the beginning accumulation date at the time they are first used to store hazardous waste.
5. Mass Design has violated Env-Wm 507.03(a)(1)b., c., and d. by failing to mark each container storing hazardous waste with the words "hazardous waste", words to identify the contents of the container, and the EPA or state waste number at the time they are first used to store hazardous waste.
6. Mass Design has violated Env-Wm 509.02(a)(1) by failing to conduct inspections of the Facility, including the hazardous waste storage areas.
7. Mass Design has violated Env-Wm 509.02(a)(2) by failing to maintain a personnel training program and to adequately train all personnel handling hazardous waste.
8. Mass Design has violated Env-Wm 509.02(a)(5) by failing to submit copies of its contingency plan to all local police departments, fire departments, hospitals and State and local response teams.
9. Mass Design has violated Env-Wm 509.02(b) by failing to post complete emergency information at the nearest telephone to the hazardous waste storage area.
10. Mass Design has violated Env-Wm 510.02(d) by failing to submit hazardous waste manifest copies to DES.

E. ORDER

Based on the above findings, DES hereby orders and Mass Design agrees, and has undertaken and completed the following actions:

1. Mass Design must obtain a Limited Permit for its WWTU, as specified in RSA 147-A:4, by complying with the requirements of Env-Wm 353.04(b) through (o), including the submission of a New Hampshire Limited Permit application form to DES.

2. Mass Design shall manage waste lamps as “universal waste” in accordance with Env-Wm 1100. The DES Environmental Fact Sheet #WMD-HW-7 “Universal Waste Lamps: Management Requirements for Handlers and Transporters,” and a DES “Fluorescent Lamp and Ballast Recycling Facility” were provided to Mass Design personnel at the time of the Inspection.
3. Ensure that hazardous waste containers are properly sealed, and bungs or lids are closed except when wastes are actually being added to or removed from the container as specified in Env-Wm 507.01(a)(3).
4. Ensure that all hazardous waste containers and tanks are clearly marked with the beginning date of accumulation, as specified in Env-Wm 507.03(a)(1)a.
5. Ensure that all hazardous waste containers and tanks are clearly marked with the words “hazardous waste”, words that identify the contents of the container, and the EPA or state waste number, as specified in Env-Wm 507.03(a)(1)b., c., and d.
6. Maintain a general inspection program, as specified in Env-Wm 509.02(a)(1), which references 40 CFR Part 265.15, General Inspection Requirements. This program must provide for, at a minimum, weekly inspections of areas where hazardous wastes are stored.
7. Develop and maintain a personnel training program as specified in Env-Wm 509.02(a)(2), which references 40 CFR 265.16, Personnel Training, including:
 - a. Ensure that all personnel handling hazardous waste receive annual updates of their training [40 CFR 265.16(c)]; and
 - b. Ensure that the following documents and records are maintained at the Facility:
 - i. Job title for each position at the Facility related to hazardous waste management, and the name of the employee filling each job;
 - ii. A written job description, including requisite skills, education and duties, for positions with hazardous waste management duties;
 - iii. A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position with hazardous waste management duties; and,
 - iv. Documentation that training has been completed.
8. Submit copies of the contingency plan to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services, as specified in Env-Wm 509.02(a)(5), which references 40 CFR 265 Subpart D, Contingency Plan and Emergency Procedures.
9. Ensure that the location of emergency equipment, including fire extinguishers and spill control material, are posted at the nearest telephone to each hazardous waste storage area, as specified in Env-Wm 509.02(b).

10. Retain and distribute manifest copies for future shipments of hazardous waste, as specified in Env-Wm 510.02(d).

F. ADMINISTRATIVE FINES

Allegations:

1. Specifically, Mass Design failed to submit a request for the renewal of Permit No. DES-HW-LP-95-002 within 90 days prior to the limited permit expiration date (*i.e.*, Mass Design's Limited expired on June 19, 2000), as required by Env-Wm 353.04 (r)(1) ("Violation 1"). Pursuant to Env-C 610, which references Env-Wm 353.04(r)(1), DES proposes a fine of \$900.
2. Specifically, Mass Design failed to conduct an adequate waste determination on waste lamps, as required by Env-Wm 502.01 ("Violation 2"). Env-C 612.05(a) authorizes a fine of \$1,500 per determination.
3. Specifically, Mass Design failed to close one (1) cubic yard container of hazardous waste, as required by Env-Wm 507.01(a)(3) ("Violation 3"). Env-C 612.06(c)(1) authorizes a fine of \$400 for each container that is 55-gallons or greater.
4. Specifically, Mass Design failed to mark one (1) cubic yard container of hazardous waste with the beginning accumulation date, as required by Env-Wm 507.03(a)(1)a. ("Violation 4"). Env-C 612.06(k) authorizes a fine of \$250 for each container that is 55-gallons or greater.
5. Specifically, Mass Design failed to properly mark one (1) cubic yard container of hazardous waste located in the Plating Room with the words "Hazardous Waste", the contents of the container, and EPA or state waste number, as required by Env-Wm 507.03(a)(1)b., c., and d. ("Violation 5"). Env-C 612.06(i) authorizes a fine of \$600 for each container that is 55-gallons or greater.
6. Specifically, Mass Design failed to conduct and document weekly inspections of the two (2) hazardous waste storage areas (*i.e.*, the Plating Room and Shipping Room) for three years as required by Env-Wm 509.02(a)(1) ("Violation 6"). Env-C 612.07(a) authorizes a fine of \$1,000 per inspection per area, for a potential fine of \$312,000. For settlement purposes only, DES is seeking a fine for one (1) count of failing to conduct inspections at one (1) hazardous waste storage area. (*i.e.*, Mass Design is a FQG(SQG) and had only one (1) box of sludge stored at the facility at the time of the inspection). DES is thus seeking a penalty of \$1,000.
7. Specifically, Mass Design failed to perform initial hazardous waste training for Paul Boduch (Emergency Coordinator), as required by Env-Wm 509.02(a)(2). Env-C 612.07(b) authorizes a fine of \$1,750 per individual not trained for initial training.
8. Specifically, Mass Design failed to submit copies of its contingency plan to all local police departments, fire departments, hospitals, and State and local emergency response teams, as required by Env-Wm 509.02(a)(5) ("Violation 8"). Env-C 612.07(e) authorizes a fine of \$2,000.

9. Specifically, Mass Design failed to post complete emergency posting at the nearest telephone to the hazardous waste storage area, as required by Env-Wm 509.02(b) ("Violation 9"). Env-C 612.07(h) authorizes a fine of \$1,000 per area.

10. Specifically, Mass Design failed to forward eight (8) copies of hazardous waste manifests (*i.e.*, PAG326002, PAG326006, PAG326003, PAG326001, PAG326004, PAG326005, PAG 468521, and PAG470180), with signatures, to DES within five (5) days, as required by Env-Wm 510.02(d) ("Violation 10"). Pursuant to Env-C 610, which references Env-Wm 510.02(d), DES proposes a fine of \$500 per shipment, for a potential fine of \$4,000.

Payment:

11. DES agrees to waive fines associated with Violations 2, and 8 through 10 because they are not Class I violations.

12. Mass Design agrees to pay \$4,685 as itemized below for Violations 1, 3 through 7 which are Class I violations, upon execution of this Administrative Order by Consent, by Mass Design.

- a. Violation 1 is a Class I violation. DES has determined due to Mass Design's high level of cooperation and its effort to correct the violation that a 10% reduction should be applied. DES is thus seeking a fine of \$810.
- b. Violation 3 is a Class I violation. DES has determined due to Mass Design's high level of cooperation and its effort to correct the violation that a 10% reduction should be applied. DES is thus seeking a fine of \$360.
- c. Violation 4 is a Class I violation. DES has determined due to Mass Design's high level of cooperation and its effort to correct the violation that a 10% reduction should be applied. DES is thus seeking a fine of \$225.
- d. Violation 5 is a Class I violation. DES has determined due to Mass Design's high level of cooperation and its effort to correct the violation that a 10% reduction should be applied. DES is thus seeking a fine of \$540.
- e. Violation 6 is a Class I violation, and DES is seeking \$1,000.
- f. Violation 7 is a Class I violation, and DES is seeking \$1,750.

13. Payment under Section F. Paragraph 12 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and shall be mailed to:

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

14. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of

the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

15. The effective date of this Administrative Order by Consent will be the date on which it is signed by an authorized representative of Mass Design, the Director of the Waste Management Division, and the Commissioner of DES.

16. No failure by DES to enforce any provision of this Administrative Order by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Administrative Order by Consent on any further breach or default.

G. CONSENT AND WAIVER OF APPEAL

1. By execution of this Administrative Order by Consent, Mass Design agrees that this Order shall apply to and be binding upon Mass Design, its officers, directors, successors and assigns their heirs, successors, and assigns, and agrees that this Order may be entered and enforced by a court of competent jurisdiction.

2. By execution of this Administrative Order by Consent, Mass Design waives any right to appeal this Administrative Order by Consent provided by statute, rule, or common law, including without limitation the right to appeal to the Waste Management Council, and waives any right to object to the entry and enforcement of this Order by a court of competent jurisdiction.

3. By execution of this Administrative Order by Consent, Mass Design waives any right to a hearing on or appeal of the administrative fine specified in Section F provided by statute, rule, or common law, and waives any right to object to the fine in any collection action initiated by DES due to non-payment of the fine by Mass Design.

H. OTHER PROVISIONS

DES will continue to monitor the compliance status of Mass Design to determine whether the Facility has come into, and is maintaining, full compliance with the applicable rules. Future violations will result in additional enforcement action being taken. Mass Design is required to maintain compliance with all on-going requirements, including those identified in Section E of this Administrative Order by Consent.

Mass Design may assert a confidentiality claim covering part or all of the information requested which constitutes a trade secret, in accordance with RSA 147-A:7, II. If no such claim accompanies the information when it is received by DES, it may be made available to the public by DES without further notice to Mass Design.

MASS DESIGN CORPORATION

COPY


By: Anthony Bourassa, President
Duly Authorized

9-10-04
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY


Anthony P. Giunta, P.G.
Director
Waste Management Division

9/10/04
Date

COPY

Michael P. Nolin, Commissioner

9/13/04
Date

cc: DB/RCRA/ORDER/ARCHIVE
Gretchen R. Hamel, Legal Unit Administrator
Public Information Coordinator, DES
Jennifer Patterson, NHDOJ-OAG
City Clerk, Nashua, NH